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Jason Clay Pearson

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LOUIS N. MORENO

P.O. BOX 511 , B-75

KINGSPORT, TN 37662

EXAMINER

SZEKELY, PETER A

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/772,121
Filing Date: February 04, 2004
Appellant(s): PEARSON ET AL.

Louis N. Moreno
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 1/14/08 with a supplemental brief filed 5/14/09, appealing from the Office action mailed 7/3/07.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,287,325	Jackson, Jr. et al.	9-1981
5,859,073	Pfaender et al.	1-1999

6,103,857	Jones et al.	8-2000
5,656,715	Dickerson et al.	8-1997
6,342,579	Jeon et al.	1-2002
6,727,303	Ono et al.	4-2004
6,780,917	Hashimoto et al.	8-2004
2003/0109629	Pierre et al.	6-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

Claims 1, 3-33 and 68-71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ono et al. 6,727,303 or Hashimoto et al. 6,780,917, in view of Pierre et al. 2003/0109629, Pfaender et al. 5,859,073, Jackson, Jr. et al. 4,287,325, Dickerson et al. 5,656,715, Jones et al. 6,103,857 or Jaen et al., 6,342,579.

Ono et al. disclose polycarbonate and polyester in claim 1, bisphenol A derived polycarbonate in column 4, lines 31-45, diols and diacids in the paragraph overlapping columns 11 and 12, metal catalysts in column 12, lines 43-60, intrinsic viscosity in column 12, lines 61-65, phosphites in column 22, lines 1-31 and column 24, lines 49-68, their concentration in column 27, lines 1-7, UV absorbers and hindered amines with their concentrations from column 27, line 38, to column 28, line 37. Hashimoto et al. teach polycarbonate and polyester in claim 1, bisphenol A derived polycarbonate in column 4, lines 26-39, diacids and diols from column 8, line 61, to column 9, line 23, metal catalysts from column 9, line 47, to column 10, line 7, intrinsic viscosity in column

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10, lines 10-13, phosphites and their concentrations from column 22, line 61, to column 23, line 58, UV absorbers and hindered amines with their concentrations in column 24, lines 11-31. Pierre et al. recite polyester, polycarbonate, UV absorber and hindered amine in claim 1, hindered amines in claims 25-28 and 39, their concentrations in claim 29, UV stabilizers in claims 31-34, diacids and diols in paragraphs 0012-0026, intrinsic viscosity in paragraph 0018, metal catalyzed polyester in paragraph 0027, bisphenol A derived polycarbonate in paragraph 0036, phosphites in paragraph 0048, their concentrations in paragraph 0049 and UV stabilizers and hindered amines in paragraphs 0061-0082. See also Tables 1-3. Pfaender et al. divulge polyester and polycarbonate in claim 1, phosphites in claim 5, and hindered amines in column 25, lines 24-27. Jackson, Jr. et al. reveal polyesters from diacids and diols in claims 1-3. Dickerson et al. display diacids and diols in claims 14, 18 and 19. Jones et al. present diacids and diols in claims 1-8. Jeon et al. describe diols and diacids in claim 1. It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to the phosphites, the hindered amines and the monomers of the diacids and diols of the secondary references, in the shown ratios, in the compositions of the primary references, since they are all using polyesters and polycarbonates in similar compositions.

The rejections over all other references used in the Final Rejections are withdrawn by the examiner because said references are merely cumulative.

(10) Response to Argument

The cited primary references disclose all the ingredients of applicants' claimed compositions, namely polyesters, polycarbonates, phosphites and hindered amines. They show metal catalysts, the claimed diols and diacids, bisphenol A derived polycarbonates and the molecular weights of the polyesters too. Accordingly, they would exhibit the so-called unexpected results due to the presence of the HALS compounds and the phosphorus compounds discussed in applicants' second reply and amendment. Applicants have discovered a new property of a known composition. It is not patentable. A composition having optional ingredients reads on compositions containing the optional ingredient and compositions not containing the optional ingredient. Admittedly, the primary references do not show the ratios of the different monomers making up applicants' claimed polyesters. However, the secondary references cover the claimed monomer ratios, proving that polyesters of the claimed compositions are well known. Furthermore, applicants have not shown that variations in the ratios or chemical compositions of different monomers making up the claimed polyesters make the slightest difference as far as the stability (light, heat and hydrolytic) of the claimed compounds are concerned. This proves that the compositions are obvious. Minimizing the catalyst residue is also well known. This is done to overcome deleterious effects. Ono et al. show deactivation of the catalysts in column 12, lines 54-60, while Hashimoto et al. refer to it in column 10, lines 1-7. Pierre et al. discuss catalyst quenchers in paragraphs 0029-0032. Jones et al. restrict the catalyst to less than about 100 ppm in column 3, lines 8-10. Jeon et al. relate catalyst usage of 5-100

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ppm in the paragraph overlapping columns 2 and 3. Minimizing the harmful residue is obvious. The small residue is inherent in the composition.

The reply brief filed 3/28/08 has been entered and considered.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Peter Szekely/

Primary Examiner, Art Unit 1796

Conferees:

/Harold Y Pyon/

Supervisory Patent Examiner, Art Unit 1796

/Christopher A. Fiorilla/

Chris Fiorilla

Supervisory Patent Examiner, Art Unit 1700